STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a AmerenCILCO Proposed general increase in electric and gas delivery service rates.	)	Docket Nos. 09-0306 09-0309
Central Illinois Public Service Company d/b/a AmerenCIPS Proposed general increase in electric and gas delivery service rates.	)	Docket Nos. 09-0307 09-0310
Illinois Power Company d/b/a AmerenIP Proposed general increase in electric and gas delivery service rates.	)	Docket Nos. 09-0308 09-0311

(Consolidated)

REPLY BRIEF ON EXCEPTIONS OF
THE AMEREN ILLINOIS UTILITIES

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INTRODUCTION

In virtually all instances, the exceptions to the Administrative Law Judge's Proposed Order ("ALJPO') taken by Staff and Intervenors ask the Commission to fix things in the ALJPO that are not broken. The Commission should reject the Staff and Intervenor exceptions discussed below, and issue a final order that is consistent with the Ameren Illinois Utilities' ("AIU") brief on exceptions.

IV. RATE BASE

B. Contested Issues

2. Accumulated Reserve for Depreciation

AG/CUB and IIEC take exception to the rejection of their proposal to adjust the AIU's depreciation reserve for plant in service. Their proposed adjustments would increase accumulated depreciation on embedded plant (i.e., plant in service as of the end of the test year) that will occur in the 14 month period between the end of the 2008 test year and the month ending February 2010. Staff takes exception to only one finding relating to this issue, but not to the ultimate conclusion rejecting the AG/CUB and IIEC's adjustments. Because the ALJPO is fully supported by the record, Staff, AG/CUB and IIEC's exceptions should be rejected.

a. Intervenors provide no discernible reason for the Commission to abandon its prior decisions or its position in pending appeals.

The ALJPO contains a thorough, extensive discussion of all parties' arguments on this issue. Contrary to claims that the ALJPO "ignores" or "disregards" certain evidence or arguments, "[t]he Commission emphasizes that it has closely reviewed the parties' positions, which are clearly articulated, as well as the cases cited by the parties and fully understands both points of view." (ALJPO, p. 29.) The ALJPO also notes – correctly – that the record in this proceeding is closely analogous to the record in four prior proceedings where a depreciation reserve adjustment was at issue. "In conclusion, the Commission is unable to discern any meaningful difference between the record in this proceeding and the records of its cases that reach the same conclusion." (Id., p. 30.) Having fully and properly considered the law and evidence, the ALJPO rejects the adjustment proposed by AG/CUB and IIEC. "Again, the Commission understands AG/CUB's and IIEC's point of view; however, such a pro forma adjustment is not consistent with the Commission's test year rules." (Id.)

No party's exceptions take issue with the proposition that "if the Commission is to deviate from prior decisions, there must be a discernible reason." (Id.) AG/CUB and IIEC have not provided any discernable reason why the Commission's test year and pro forma adjustment rules must be interpreted differently in this case than in prior cases. As the Commission has explained repeatedly, and as discussed at length in the AIU initial and reply briefs (AIU Init. Br., pp. 17-26; AIU Rep. Br., pp. 19-24), the Commission's test year and pro forma adjustment rules, Parts 287.20 and 287.40, allow a utility to adjust historical test year plant to account for known and measurable post-test year capital additions, including the related adjustments to depreciation on those post-test year additions. Part 287.40 does not require a utility to carry forward and restate the entirety of its embedded plant in service balance beyond its historical test year. As the Commission has repeatedly found, AG/CUB and IIEC seek to simply bring the depreciation reserve on the entire embedded plant forward through February 2010, in effect moving one element of rate base (and only one element) to a future period while all other elements of the revenue requirement remain based on a historical period. (Ameren Ex. 51.0 2d Rev. (Stafford Sur.), pp. 17-18; Ameren Ex. 69.0 (Fiorella Sur.), pp. 7-8, 10, 13-14.)

AG/CUB and IIEC's briefs on exceptions do not identify any arguments or evidence that the ALJs failed to consider. All they do is repeat their arguments and assert that the ALJPO decides the issue incorrectly. They re-hash the very same arguments that they have made throughout this proceeding and, indeed, in the four prior proceedings where the Commission rejected the same proposed adjustment. Neither party credibly distinguishes the record in this proceeding from the evidence before the Commission in the four prior cases where the Commission rejected the adjustment. See Commonwealth Edison Co., Order, Docket 07-0566 (Sept. 10, 2008)("ComEd III"); North Shore Gas Co./Peoples Gas Light and Coke Co., Order, Docket 07-0241/0242 (Feb. 5, 2008); ("Peoples"); Commonwealth Edison Co., Order, Docket 05-0597 (July 26, 2006)("ComEd II"); Commonwealth Edison Co., Order, Docket 01-0423 (Mar. 28, 2003) ("ComEd I").

Moreover, as the AIU pointed out in their post-hearing briefing, the ComEd III and Peoples Orders are currently on appeal. (See AIU Rep. Br., App'x A & B.) There is not a single, substantive argument in AG/CUB or IIEC's briefs on exception that they have not also made in the pending appeals. And in those appeals, the Commission represented to the courts that it cannot lawfully adopt AG/CUB and IIEC's interpretation of Part 287.40. In the Commission's brief filed recently in the ComEd III appeal, it noted, "in the absence of a rule change, the Commission is not authorized to create such a selective two and a half year test year rule for depreciation on the historical rate base." Case No. 02-08-0959 et al., Ill. App. Ct. 2nd Dist., Brief of Ill. Commerce Comm'n, pp. 9-10. The Commission also confirmed, "the existing Commission rule specifically forbids the use of a general attrition factor to base a pro forma adjustment." Id., p. 11. Given the Commission's consistent interpretation of Section 287.40, "[t]o have adopted the [petitioners'] position on this issue at this late date would be merely arbitrary as the Commission itself found." Id., p. 13. The Commission found the dissenting opinion in ComEd III unavailing, pointing out that "no amendment of 83 Ill. Adm. Code 287.40 has been made." Id., p. 14. The Commission's brief in the appeal of the Peoples decision is consistent with its positions in ComEd III. Case No. 1-08-2055 et al., Ill. App. Ct. 1st Dist., Brief of the Illinois Commerce Comm'n, pp. 22-29.

Because AG/CUB and IIEC offer no new arguments in their exceptions, no purpose would be served by going through their arguments again and dissecting each one point-by-point. The AIU already did so in initial and reply briefs. The Commission is quite familiar with this issue and all the arguments both for and against the Intervenors' proposed adjustment.

b. The ALJPO is fully supported by the record.

While there is no need to re-hash in detail all of the arguments that the parties have already briefed, it is important that the Commission understand the fundamental flaws in the Intervenors' position.

One of the most glaring flaws is the tortured interpretation of the Commission's decision in AmerenCIPS/AmerenUE, Docket 02-0798/03-0009 (cons.) (Oct. 22, 2003). Throughout this and other proceedings, Intervenors have insisted that this case stands for the proposition that whenever the Commission authorizes a pro forma adjustment for capital additions, it is appropriate (in fact, necessary) to adjust the depreciation reserve for embedded plant. The ALJPO concludes that the disputed issue in Docket 02-0798 "was actually pro forma plant additions rather than the accumulated reserve for depreciation."[1] The ALJPO is correct.

The Commission Conclusion section of the Order in Docket 02-0798 does not discuss test year or pro forma adjustment rules. Nor is there any discussion of if, how or why depreciation reserve on embedded plant should be calculated. The issue in dispute was whether pro forma plant additions should be allowed in the first instance. "AG advocates disallowing the Companies' proposed post-test year capital additions altogether, or alternatively adjusting the Company's proposal to account for increases in accumulated depreciation after the end of the test year." Order, p. 8. The Commission allowed pro forma capital additions for the utility that demonstrated an increasing trend in plant investment (AmerenUE), and rejected pro forma additions for the utility that did not (AmerenCIPS).

The dissent in ComEd III (Docket 07-0566) observed that the pro forma adjustment approved for AmerenUE included an adjustment to the depreciation reserve for embedded plant. (Dis. Op., p. 8.) That is all well and good, but the fact remains that the calculation of depreciation reserve was not the primary disputed issue in Docket 02-0798; the accounting treatment eventually ordered was the result of an alternative proposal, not the primary proposal to disallow plant additions altogether. Moreover, the result in Docket 02-0798 was predicated on the finding that AmerenCIPS' rate base show a declining trend (Order, p. 10), whereas the undisputed evidence here is that the AIU's rate base is increasing. (Ameren Ex. 29.0 Rev. (Stafford Reb.), p. 22; Ameren Ex. 29.19.) The Docket 02-0798 Order simply provides

[1] This is the only finding in the ALJPO (on this issue) to which Staff takes exception. Staff's exception should be rejected for the same reasons as the Intervenors'.

no authoritative guidance or persuasive authority, as the Commission has repeatedly found. See, e.g., Order, Docket 07-0566, p. 29.

Equally flawed is Intervenors' interpretation of Section 9-211 of the Public Utilities Act.[2] IIEC argues that this statute "effectively defines the maximum value of a utility's ratemaking rate base that the Commission can lawfully approve" and "denies the Commission any authority to approve any rate base that includes any investment that is not actually used in providing service to ratepayers." (IIEC BOE, p. 18.) AG/CUB similarly argue that the term "value of such investment" in Section 9-211 refers to "net plant," including both gross capital additions and the reduction in asset values as measured by depreciation. (AG/CUB BOE, pp. 6-7.)

The ALJPO properly rejects the notion that Section 9-211 has anything at all to do with establishing rate base values or otherwise mandating any particular accounting conventions, including the appropriate treatment of pro forma adjustments for plant additions. "The purpose of Section 9-211 of the Act is to ensure that the Commission does not allow utilities to include in rate base plant costs that are either imprudently incurred or investments in plant that are not used and useful in providing service." (ALJPO, p. 30.) The ALJ's interpretation of Section 9-211 is confirmed by the immediately preceding statute, Section 9-210, which gives the Commission considerable discretion in determining the "value" of utility property. "The Commission shall have power to ascertain the value of the property of every public utility in this State and every fact which in its judgment may or does have any bearing on such value." (emphasis added). Accordingly, Section 9-210 gives the Commission ample discretion to

[2] This statute provides: "The Commission, in any determination of rates or charges, shall include in a utility's rate base only the value of such investment which is both prudently incurred and used and useful in providing service to public utility customers."

ascertain the "value" of rate base by allowing pro forma capital additions without deducting additional depreciation for embedded plant. Section 9-211 does not limit the Commission's discretion, and certainly does not constrain the Commission's interpretation of Part 287.40, as Intervenors allege. At any rate, IIEC and AG/CUB have not argued that the plant additions reflected in the AIU's pro forma adjustment were not prudently incurred nor used and useful.

Intervenors' conclusory assertions that the ALJPO is inconsistent with prior Commission orders are also plainly wrong. The ALJPO is consistent in every respect with prior decisions where depreciation reserve associated with pro forma plant additions was directly at issue. See ComEd I, ComEd II, ComEd III and Peoples.

Arguing otherwise, AG/CUB cite three cases and criticizes the ALJPO for "fail[ing] to explain why these decisions are not relevant to [] Ameren's similar, one-sided increase to rate base." (AG/CUB BOE, p.5.) Each case that AG/CUB cite is readily distinguishable. For example, AG/CUB cite Central Illinois Light Co., Docket 02-0837 ("Cilco"), to argue that "the Commission rejected the utility's proposal because its pro forma adjustment (plant additions) failed to account for changes in accumulated depreciation." (AG/CUB BOE, p. 4.) AG/CUB is making this up. As in Docket 02-0798, the issue in Cilco was whether to permit a pro forma adjustment for plant additions. AG/CUB did not argue that the additions should include depreciation on embedded plant. AG/CUB argued that the additions should not be allowed at all. Order (Oct. 17, 2003), pp. 6-7. "The Commission agrees that under the circumstances of this case, where net plant in service shows a consistent declining trend, it is unwise to adopt a post-test year change that fails to account for accumulated depreciation." Order, p. 8 (emphasis added). Thus, the Cilco Order makes clear that the Commission rejected the pro forma adjustment not because the utility failed to account for depreciation on embedded plant, but because the utility did not show an inclining trend in rate base. Here, it is undisputed that the AIU's rate base is increasing, not decreasing. Cilco is therefore readily distinguishable for the same reason as the Order in Docket 02-0798.

Nor was the calculation of depreciation reserve an issue in the third case AG/CUB cite, Illinois Power Co., Docket 01-0432 (Mar. 28, 2002). AG/CUB fail to mention that the parties did not dispute the utility's proposal to adjust the depreciation reserve on embedded plant for capital projects scheduled to be placed into service after the test year. Order, p. 20.

Likewise, the string cite of cases on page 4 of IIEC's brief, all of which were decided between 1973 and 1993, are of no significance here. IIEC cites these cases for the proposition that the Commission has "an established practice of using a net plant rate base." (IIEC BOE, p. 4.) But none of these cases addressed the issue of whether it is appropriate to deduct additional depreciation on embedded plant for pro forma capital additions. That these orders contain a reference to "net plant" in the summary of the utility's rate base is utterly meaningless.

IIEC's "net plant theory" does not become more persuasive with repetition. This theory holds that because the calculation of rate base consists of gross plant less depreciation, a pro forma adjustment for post-test year plant additions requires a corresponding adjustment to depreciation reserve; otherwise, rate base will be overstated and not accurately reflect net plant in service. The AIU have previously explained why this argument fails. (AIU Rep. Br., p. 20.) Test year plant in service has been calculated, net of depreciation, as of December 31, 2008. The pro forma capital additions are a separate category of plant in service. These additions have been calculated, also net of depreciation, as of February 28, 2010. (Ameren Ex. 51.0 2d Rev., pp. 20-21.) Thus, both embedded plant and pro forma additions are calculated on a net plant basis. The recognition of depreciation on the pro forma capital additions "reflect[s] changes affecting the ratepayers in plant investment" associated with these additions. This is precisely what Section 287.40 allows. What the rule does not allow is the recognition of additional depreciation on embedded plant — a different category of plant in service separate and unrelated to the pro forma additions. IIEC's proposal improperly moves the test year forward for the depreciation reserve for embedded plant, based solely on attrition (i.e., the decline in value of an asset over time as recognized in depreciation expense), which is expressly prohibited by Section 287.40. The Commission has explained this multiple times. (See AIU Rep. Br., App'x A, p. 11; App'x B, pp. 27-28.)

The final, fatal flaw in Intervenors' position is their failure to identify relevant facts that distinguish this case from prior cases where the Commission addressed the identical issue. IIEC's laundry list of alleged new or additional "facts" that it claims supports a different result in this case does not carry the day. (IIEC BOE, pp. 10-11.) Most of the alleged "facts" can be quickly disposed of as nothing more than unfounded conclusions, and the statements that could be fairly regarded in facts are in no way "distinctive," let alone dispositive. Equally unpersuasive is IIEC's re-hash of its argument that Mr. Gorman's *ex post* analysis of the pro forma adjustment approved for ComEd in Docket 07-0599 somehow proves that ComEd's rate base was overstated or, by implication, that the AIU rate base will also be overstated. The AIU debunked this argument in their post-hearing briefing. (AIU Rep. Br., pp. 26-27.) The ALJPO properly rejects this argument as well. (ALJPO, p. 30.) Simply because Mr. Gorman's adjustment to embedded plant was rejected does not mean that ComEd's plant in service was overstated or that ComEd over-earned its return. Indeed, ComEd's recent public pronouncements that it intends to file another rate case in the near future debunks Mr. Gorman's theory that the order in ComEd's last case allowed the utility to over-earn its return.

The ALJPO is fully supported by the record, and the result is consistent with the Commission's prior determinations on this issue. AG/CUB, IIEC and Staff's exceptions on this issue should be rejected.

3. Pana East Substation

The ALJPO adopted the AIU's proposal to include in AmerenCIPS' electric rate base the capital costs associated with relocating the Pana East substation. (ALJPO, pp. 35-36.) The ALPJO rejected Staff's proposal as unreasonably allocating 100% of the costs to shareholders. (Id.) The ALJPO also found that Staff failed to demonstrate why these costs should be partially allocated to AIU's gas customers. (Id.) Although it does not contest the ALJPO's result, Staff takes exception with the ALJPO's characterization of Staff's position, namely its statement that Staff "denies . . . that it has any obligation to provide an alternative allocation proposal." (Id., p. 34.) Staff also seeks to amend the ALPJO to set forth alternative allocation proposals that it claims it offered in the absence of an alternative proposal from the AIU. (Staff BOE, pp. 4-6.)

The Commission should reject Staff's proposed modifications to the ALJPO. As Staff witness Rockrohr acknowledged at the evidentiary hearing, Staff did not propose an alternative allocation of these costs in its testimony, in response to AIU's discovery requests or at hearing:

> Q. But you haven't recommended in your testimony what that appropriate manner of allocation should be, correct?

A. Correct. I requested that Ameren justify its 100 percent allocation in my direct testimony.

Q. But in your rebuttal testimony and in response to data requests subsequent to your rebuttal testimony, you didn't recommend a different or appropriate allocation of those costs, correct?

A. Correct.

Q. It is your position today that you just don't think that the appropriate manner is what Ameren recommended, to allocate 100 percent of those costs to electric customers?

Q. Correct.

. . .

Q. The AIUs proposed an allocation, correct in this proceeding?

A. Yes, 100 percent allocation to electric.

Q. And you, the Staff, has not proposed an alternative allocation, correct?

A. That is correct.

(Tr. 209-210, 212; see also Ameren Ex. 50.2.) As the record stands, the AIU proposed an allocation that is fully supported by the evidence. Staff did not propose any allocation; Staff proposed a disallowance of all costs. Any alternative cost allocations suggested by Staff in post-hearing briefing were untimely and unsupported. Thus, the Commission should reject Staff's exception to improperly bolster and recast its positions.

5. Cash Working Capital

Response to IIEC

IIEC challenges two aspects of the ALJPO's conclusions regarding cash working capital ("CWC"): 1) the collection lag, and 2) treatment of uncollectible expenses.

IIEC contends that Part 280.90 of the Commission's rules, which allows residential customers 21 calendar days from the issuance of the monthly bill to pay the bill before late charges <u>may</u> be assessed, requires that the AIU's collection lag be set at 21 days. The irrefutable fact is that not all customers pay their bills within 21 days. (Ameren Ex. 53.0 (Heintz Sur.), pp. 7-8.) The AIU's collection lag was determined based upon the utilities' actual collection experiences during the test year. (Ameren Ex. 4.0E-G (Heintz Dir.), pp. 6-7.) The ALJPO's conclusions in this regard simply reflect this fact. Thus, IIEC's exception is groundless.

IIEC also argued that the AIU's collection lag should be reduced to exclude uncollectible expenses. The AIU, however, tested the effect of including/excluding uncollectibles in the collection lag. (Ameren Ex. 53.0, p. 8.) That analysis showed that the exclusion of uncollectible expenses from the collection lag did not impact the overall analysis, (<u>id.</u>), and the ALJPO rejected IIEC's proposal. IIEC presented no evidence to the contrary. Thus, IIEC's exception is unsupported by the record.

<u>Response to Staff</u>

Staff challenges the treatment of pass-through taxes in CWC. Contrary to Staff's assertion, when the AIU remit the payment of pass-through taxes, in accordance with the taxing authorities' payment schedules, prior to receipt of the customers' payment for such taxes, the AIU's shareholders have an investment and they are entitled to a return on such investment. (Ameren Ex. 31.0 (Heintz Reb.), pp. 7-8.) The AIU's lead-lag study demonstrated that, for most of the pass-through taxes, the taxes were remitted by the AIU to the taxing authorities prior to the receipt of the customers' payment. (Ameren Ex. 31.0, pp. 4-5; Ameren Ex. 31.1.)

The ALJPO is consistent with the Commission's findings in the AIU's prior rate proceeding (Docket Nos. 07--0585 et. al. (cons.)), in which the Commission indicated that it could not identify a meaningful difference between pass-through taxes and most other expenses. The Commission, therefore, concluded in that proceeding that Staff's proposed adjustment to the CWC requirement associated with pass-through taxes was inappropriate, and rejected that adjustment. (Final Order, p. 62) Despite the Commission's conclusion in the last case, Staff has proposed a similar adjustment in these proceedings. Staff's exception regarding CWC should again be rejected.

6. Gas in Storage

Staff takes exception to the ALJPO's adoption of the AIU's methodology for valuing gas in storage. (Staff BOE, p. 9) In so doing, Staff reiterates many of the same arguments made in its briefs. AG/CUB also take exception to the ALJPO's conclusion, making arguments similar to Staff's. (AG/CUB BOE, pp. 11-13.) For the reasons discussed below, and the AIU's Initial Brief (pp. 47-52) and Reply Brief (pp. 43-47), Staff and AG/CUB's position on the valuation of gas in storage should be rejected.

Staff initially discusses the ALJPO's criticism of the parties for adoption of different measurement periods in adjusting certain expenses. The AIU agree generally with Staff's contention, "A party's determination for the appropriate measurement period for each item is dependent on what information is available about a topic as well as many other extraneous events" (Staff BOE, p. 10) and that the determination of appropriate measurement periods may vary on a case by case by case or expense item by expense item basis. Such agreement, however, should not be construed as acceptance of Staff's valuation of gas in storage, as discussed below. The AIU also note that Staff's discussion (Staff BOE, pp. 10-13) suggests that Staff has more involvement and a deeper "knowledge base" regarding gas pricing than transportation fuels pricing. The fact that Staff's "knowledge base" on gas prices is apparently larger than on transportation fuel prices, however, is not based on the testimony of any witness, and should not be relied on in any way as support for Staff's contentions with respect to the valuation of gas in storage.

Staff raises three concerns with the AIU's proposal to average 2007-2009 gas prices to value their gas utilities' requested working capital allowance for gas in storage amounts: (1) the ALJPO ignores the Commission's prior conclusion on this issue; (2) the ALJPO relies on outlier 2008 gas prices; (3) Staff's proposed use of 2009 prices is representative of future gas costs. (Staff BOE, pp. 13-17.) These arguments should be rejected.

Staff accuses the ALJPO of ignoring the fact that the Commission approved a different measurement period in the AIU's prior rate case and not explaining why a different approach is being used in this case. No such explanation is necessary, however, because, as the AIU explained in briefing: (i) the record shows that circumstances have changed since the prior case; and (ii) Staff's proposal does not appear to be consistent with the Commission's Order in the AIU's last rate case either. (AIU Init. Br., pp. 48-50.)

As the AIU set forth in their initial post-hearing brief, circumstances have changed since the last case, and the AIU's three-year average proposal is therefore appropriate. (AIU Init. Br., pp. 50-51.) The AIU have seen an increase in volatility of gas prices since the prior case. Natural gas is among the most volatile commodities that are traded (as Staff (BOE, p. 17) and AG/CUB (BOE, p. 11), agree), so using a three-year average will reduce the impact that volatility has on storage working capital. (Ameren Ex. 45.0 Rev. (Seckler Reb.), p. 9.) In fact, Staff's argument that 2008 gas prices are an "outlier" confirms that gas prices are volatile and so are appropriately subject to averaging to smooth out the variations. In addition, in the prior case, the AIU proposed a methodology to reflect projected gas prices during the summer injection season of 2008 because the working capital allowance for gas in storage was calculated at the beginning of the injection season (April 2008). (Id.) That concern is not present in this case, as the working capital allowance for gas in storage is being calculated at the end of the injection season when actual prices are known (October 2009). (Id.)

Moreover, the prices used in the AIU's proposed three-year average include the most current prices through December 2009, which is consistent with the use in Docket 07-0585 of current pricing to match projected changes in volumes. (Ameren Ex. 65.0 (Seckler Sur.), p. 8.) Furthermore, the AIU calculate the volume of gas in storage as a three-year average (reflecting known changes), so the use of a three-year pricing average matches the prices to volumes. (Ameren Ex. 45.0 Rev., p. 9.)

In the prior case, Staff requested volumes of gas in storage be updated for known contract changes. Order, Docket 07-0585 (cons.) (Sept. 24, 2008), pp. 74-77. The AIU updated the value of their working capital allowance for gas in storage based on updated volumes and to reflect the AIU's price hedging, or, where prices were not hedged, to reflect *forward* NYMEX strip prices for the period when rates would come into effect. Id., pp. 75-76. As the Final Order in Docket 07-0585 (cons.) found, the use of the NYMEX data for the period April through October 2008 (where 2006 was the test year), which is the traditional injection season, was appropriate. Id., p. 77. In this case, however, Staff proposes use of 2009 prices, which do not reflect the *forward* prices for the period when the rates would come in effect (expected to be May 2010). Therefore, Staff cannot defend its approach as consistent with the prior order.

Staff also claims that 2008 gas prices are outliers and so must be excluded from the valuation of gas in storage. (Staff BOE, pp. 14-15.) This argument ignores the fact that 2008 is the test year in this proceeding, and the purpose of the AIU's proposed adjustment. Because 2008 is the test year, the 2008 gas prices could be used for valuation of gas in storage. Recognizing that the test year gas prices were high, however, the AIU proposed an adjustment that smoothed out the variation in gas prices over a three year period, thereby achieving a more representative price level for gas in storage. Staff's proposal, by contrast, simply ignores the test year entirely and proposes to establish a "representative" level based only on 2009.

Moreover, the 2008 prices cannot be considered "outliers." Staff's analysis is based on one day's NYMEX close (11/2/09). (ICC Staff Ex. 25.0, p. 11, lines 204-05.) Reviewing the entire trading period for a specific month provides a significantly different picture. (Ameren Ex. 65.0, pp. 6-7.) For example, the simple average of the daily NYMEX closing price at which January 2011 has traded is $8.418 (1/3/08 through 11/25/09). (Id., p.7.) This price represents the approximate value that the AIU would have had the opportunity to purchase gas on a forward contract basis to be delivered in January 2011. (Id.) If one compares this price to Mr. Lounsberry's one day settlement price on 11/2/09 for January 2011 of $6.795 and to the 2008 price AIUs used of $8.335 to $8.903, (id.), the 2008 prices the AIU use in their analysis cannot be considered outliers. In fact, reviewing the entire NYMEX trading period for any one month supports the three year average pricing to smooth out the volatility of natural gas prices. (Id.)

Staff also asserts that its 2009 price proposal is more representative of future prices than the three-year average adopted by the ALJPO. (Staff BOE, p. 16.) It is not. As the AIU explained in post-hearing briefing (AIU Init. Br., pp. 51-52), 2009 gas prices are not more representative of expected prices than the AIU's proposal. Staff acknowledges that the future price is uncertain. (ICC Staff Ex. 25.0 (Lounsberry Reb.), p. 13, line 240.) The NYMEX futures contracts, however, also show that natural gas prices are extremely volatile. For instance, the January 2011 NYMEX contract has traded in more than a $5.00 range since it began trading until 11/25/09 (from a low of $6.426 to a high of $11.822). (Ameren Ex. 65.0, p. 8.) Given this extreme range, no one can know what future gas prices will be, which again supports using a three-year average approach to calculate the value of gas in storage used for working capital purposes. (Id., pp. 8-9.)

Staff also asserts that "the AIU's existing hedged positions for 2010 and 2011 are more in line with Staff's proposal to use the 2009 gas costs." (Staff BOE, p. 16.) As AIU witness Seckler explains, some lower gas prices have been locked in through the hedging activity for 2010 (and beyond), but some higher 2008 gas prices have been locked in through the hedging activity for 2010 (and beyond) as well. (Ameren Ex. 65.0, p. 9.) The three-year average pricing method for gas in storage adopted by the ALJPO, however, captures all hedging activity for the associated time period. (Id.)

For these reasons, Staff and AG/CUB's exceptions regarding the value of working capital of gas in storage should be rejected.

V. OPERATING REVENUES AND EXPENSES

B. Contested Issues

1. Tree Trimming

The ALJPO accepted the AIU's proposed pro forma adjustment to test year operating expenses to reflect 2010 budgeted tree trimming and vegetation management expenses. (ALJPO, p. 77.) The ALJPO specifically noted that the AIU's total proposed tree trimming expenses ($39.3M) for the three electric utilities was essentially the same as the costs actually incurred by the AIU during the 2008 test year ($39.2M). (Id.) Unsurprisingly, Staff takes exception to the ALJPO's rejection of Staff's proposal to average tree trimming expenses, as neither necessary nor appropriate for this expense item. (Id.; Staff BOE, pp. 18-20.) Staff continues to insist that the AIU should recover only $34.6 million in tree trimming expenses, despite the fact that this recommended amount is materially less than the amount incurred by the AIU in either 2008 or 2009. As the AIU demonstrated, the AIU's pro forma adjustment is consistent with the utilities' current spending and built from the bottom up based on expected tree trimming activity for 2010. (AIU Init. Br., pp. 69-73; AIU Rep. Br., pp. 51-53.) The AIU presented clear evidence showing that the proposed test year amount is comparable to both actual 2008 and 2009 expenditures. (Ameren Ex. 26.0 Rev. (Nelson Reb.) pp. 6-7.) Thus, three consecutive years in a four year cycle are consistent. It is only Staff's constructed, hypothetical figure – in estimated 2008 dollars – that is inconsistent and recklessly insufficient.

Staff claims that its averaged costs based on 4 and 1/2 years of historical data smoothes out cost variances and provides a reasonable amount of tree trimming expense. But Staff has failed to address in any convincing fashion why normalization of this expense item is even appropriate in the first place. As the ALJPO observed, the variation in tree trimming expenses is in no way volatile, but rather can be characterized as a generally modest upward trend overall. (ALJPO, p. 76.) Given the Commission's recognition of the importance of maintaining and improving tree trimming and vegetation management practices (AIU Init. Br., pp. 72-73), the ALJPO finds this upward trend neither unsurprising nor inconsistent with AIU's proposed expenses in this case. (ALJPO, p. 76.) There simply are no cost variances to smooth out.

Indeed, the AIU's proposal does not even seek a material increase for this expense; it simply seeks to better allocate the current level of expense amongst the three utilities based on expected spending patterns for 2010. (ALJPO, p. 77.) Staff's approach of averaging expense data from as far back as 2005, however, unjustifiably decreases the AIU's proposed expenses far below current levels, thereby artificially reversing this upward trend. Indeed, that Staff's approach is inappropriate (and illogical) is illustrated by the fact that Staff adjusts downward the expenses for each of the three utilities, even though it concedes that expenses have to increase for the one or more utilities that will trim more than 25 percent of its system in 2010 during the AIU's four-year cycle. (AIU Init. Br., p. 71; AIU Rep. Br., p. 53.) Simply averaging historical costs to reduce tree trimming expense across the board based solely on a belief that the AIU's proposed (and current) level of expense is too high is not appropriate.

Staff also claims that ALJPO errs by accepting a pro forma adjustment based upon projected 2010 costs that should only be considered if the AIU had filed a future test year. But Staff ignores (as it did before) the evidence submitted by the AIU, both in testimony and in response to Staff data requests, that support the AIU's position that the amount of tree trimming expense projected in the 2010 budget is the appropriate amount of tree trimming expense for the test year. (AIU Init. Br., pp. 70-72.) Staff's attempts to prop up the appropriateness of its flawed normalization methodology by attacking the AIU's proposed expenses as nothing more than budgeted amounts have no basis in the record and should be ignored. The amount of expense that the AIU are reasonably certain to incur in 2010 is both known and measurable; indeed, it is approximately the same amount that the AIU already incurred in 2008 and 2009. Staff's exception to the ALJPO on tree trimming expense should be rejected.

2. Incentive Compensation

Staff disagrees with the ALJPO's finding that the record lacks evidence about the dollar amounts attributable to specific KPIs. (Staff BOE, p. 21.) Staff points out that Staff Exhibit 15.0, Attachment A, includes the specific dollar amount for each KPI for the three plans for which the AIU request recovery. (Id.) In so doing, Staff confirms the AIU's position, as stated in its brief on exceptions (pp. 7-19),[3] that the ALJPO incorrectly found the record insufficient with respect to evidence of the dollar amounts associated with each KPI.

In its exceptions language, however, Staff proposes, without explanation, that the ALJPO be modified to state, "[t]he AIU have failed to provide sufficient evidence that ratepayers obtain net benefit from certain of the goals included in the plans." (Staff BOE, p. 22.) This exceptions language should be rejected. As the AIU explained in their brief on exceptions (pp. 14-19), the standard for recovery of incentive compensation expense is not whether the expense produces a "net benefit," but whether incentive compensation plans provide "tangible

[3] As explained in the AIU's Brief on Exceptions, Ameren Exhibit 51.7 3d Rev., Schedule 7, sets forth the necessary detail of the costs associated with the AIU's KPIs.

ratepayer benefits." Northern Illinois Gas Co., Order, Docket 04-0779 (Sept. 20, 2005), p. 44 ("Costs related to incentive compensation are recoverable in rates only if the utility demonstrates tangible benefits to ratepayers"). Demonstrating "tangible benefits" does not require showing that the cost associated with each individual KPI produces net ratepayer benefits – as Staff appears to believe. (Staff BOE, p. 22.) An incentive compensation goal may provide a tangible benefit to ratepayers even if the dollar value of the benefit is not greater than the incentive compensation goal's cost because, "[t]he main and guiding criterion is that the expense be prudent, reasonable and operate in a way to benefit the utility's customers." North Shore Gas Co., Order, Docket 07-0241 (Feb. 6, 2008), p. 66. Thus in the recent Peoples Order, the Commission rejected Staff's proposal to disallow incentive compensation expenses, even though "the goals might not have been achieved in the past," because "the nature of incentive compensation is such that there is no guarantee that the goals will be met and the compensation paid to employees." Dockets 09-0166/09-0167 (Jan. 21, 2010), p. 58.

In addition, Staff's exceptions language is inconsistent with the AIU's prior rate case, in which the Commission approved recovery of all of the AIU's incentive compensation expense that the Commission determined was related to operational goals (safety, reliability and customer service), rather than financial targets. Order, 07-0585 (cons.) (Sep. 24, 2008), pp. 107-08. In this case, the AIU request no more than they received in the prior case: recovery of incentive compensation expense for all of their operational (i.e., non-financial) KPI goals.

Contrary to the Staff's exception language, the record demonstrates that the operational goals of the AIU's three incentive compensation plans[4] under which it requests expense recovery provide ratepayer benefits. Likewise, these same plans and their operational goals apply to AMS, and so recovery of requested incentive compensation expense for AMS should also be allowed. As explained in their brief on exceptions (pp. 9-15), the AIU satisfied the tangible ratepayer benefits standard by providing extensive information, in testimony and discovery responses, demonstrating the customer benefits of their incentive plans' operational goals. (Ameren Ex. 18.0E, pp. 2-6; Ameren Ex. 42.0 (Lindgren Reb.), pp. 4-7; Ameren Ex. 42.1; Ameren Ex. 51.7 3d Rev.; see AIU Init. Br., pp. 73-81; AIU Rep. Br., pp. 52-59; AIU Ebrey Cross Ex. 1.) Therefore, Staff's exceptions should be rejected and the AIU's exceptions should be adopted.

4. NESC Expenses

The ALJPO adopts Staff's adjustment to disallow certain expenditures incurred by the AIU in correcting violations of the National Electric Safety Code (NESC). (ALJPO, pp. 95-96.) LGI, however, takes exception to the ALJPO's conclusion, asking that its unsupported opinions and recommendations concerning the AIU's existing NESC violations, the Liberty Report recommendations, and the physical age of assets and level of investment in AmerenIP's systems be included. (LGI BOE, pp. 2-5.) LGI specifically requests that the ALJPO be amended to adopt Staff's recommendation — suggested for the first time during post-hearing briefing —

[4] The entirety of the EIP-O plan is funded based on financial performance. (Ameren Ex. 18.0E, p. 4.) Costs related to financial goals, however, have been removed from the AIU's requested incentive compensation expense. (Ameren Ex. 1.0E Rev. (Nelson Dir.), p. 10.) The AIU thus seek recovery of about 77% of total test year incentive compensation expense. (Ameren Ex. 51.7 3d Rev., Schedule 7.)

that the Commission order the AIU to complete all corrective actions for existing NESC violations by no later than the end of 2013. (Id., p. A-2.) LGI also asks that the Commission order the AIU to present a plan to implement all remaining Liberty recommendations, order Staff to investigate and report on AmerenIP's investment in its electrical systems, and urge the AIU to establish a program to identify all aged assets. (Id.) As discussed in the AIU's post-hearing briefing, LGI's recommendations are neither necessary nor prudent. (AIU Init. Br., pp. 117-122; AIU Rep. Br., pp. 102-04.) It would be inappropriate for the Commission to order any of the investigating, monitoring or reporting suggested by LGI or incorporate any of its unsubstantiated findings into the Final Order.

In its brief on exceptions, LGI trots out the same faulty arguments and flawed opinions that the AIU fully addressed in post-hearing briefing and the ALJPO found unpersuasive. Contrary to its claims, LGI failed to demonstrate that AmerenIP's capital and O&M expenditures are declining or lag behind the other AIU utilities. (AIU Init. Br., pp. 118-20.) Moreover, LGI's limited and unsound assessment of AmerenIP's capital investments per customer is neither sufficiently reliable nor supportive of Cities' cries of dire portent that the reliability of AmerenIP's service is under attack. (Id.) Both Staff and the AIU agree that no independent investigation or monitoring of AmerenIP's expenditures by the Commission is warranted, just as both Staff and the AIU agree that it is completely unnecessary for AmerenIP (or the AIU) to undergo a painstakingly (and ultimately ineffective and largely impossible) inspection and reporting of the physical age of each and every pole and wire in its service territories. (Id., pp. 119, 121.) The Commission should not order investigations, reporting and monitoring that are unnecessary, unjustified and a waste of the AIU and the Commission's time and resources. Nor should the Commission include in the Final Order LGI's tarot card readings and doomsday predictions of the potential public harm and total electrical system failure that may occur, should the Commission decide not to order LGI's recommendations.

Nor has LGI — or Staff for that matter — provided sufficient evidence or given the Commission good cause to order the AIU to complete its NESC corrective actions by a certain date or arbitrarily expedite correction of existing violations in AmerenIP's service territory. (AIU Init. Br., p. 121.) A NESC Corrective Action already is in place, which Staff believes remains the best approach for systematically resolving all violations. (Id.) Staff already is kept abreast on quarterly basis concerning the AIU's efforts to identify and correct existing NESC violations. (Id.) There is nothing in the record in this proceeding that either establishes the appropriate end date for completing all NESC corrective actions or suggests to the Commission that the AIU are somehow not resolving these violations at an appropriate pace. Nor is there anything in the record to establish the time, resources and costs of completing all NESC inspections and corrective actions by 2013 or indicate the impact such an endeavor would make on the AIU's other reliability projects. Staff did not even propose a fixed end date until its post-hearing briefing, much too late in the process for the idea to be even entertained. In similar fashion, there is nothing in the record to support an order by the Commission in this proceeding that the AIU present a plan to implement all remaining Liberty Report recommendations. Indeed, this very issue is already the focal point of another pending proceeding (Docket 09-0602).

The AIU's electric distribution assets are not in danger of failing. Nor is the reliability of their electric service under attack. There is nothing in the record to suggest that the AIU are asleep at the wheel and allowing their infrastructure to crumble. Moreover, the record shows that Staff is already monitoring the AIU's NESC corrective actions, implementation of the Liberty recommendations, AmerenIP's investment expenditures, and the book depreciation value of its assets. The AIU are taking the prudent and necessary actions to ensure that their service remains adequate, safe and reliable. The inspection and reporting processes already in place to maintain that level of service are efficient and cost-effective. To order AmerenIP or the AIU to incur and pass along to ratepayers additional costs to perform redundant, ineffective or non-essential work, or to set in stone timelines and tasks, is neither prudent nor reasonable.[5]

7. Workforce Reduction

The ALJPO finds it appropriate for ratepayers to bear the costs incurred by the AIU in implementing its recent workforce reduction, given that ratepayers will reap the long-term benefits of the program. (ALJPO, p. 106.) Staff, however, asks that the ALJPO be revised to disallow recovery of severance costs associated with the workforce reduction, despite the fact that these costs are necessary to execute the program. (Staff BOE, pp. 24-25.) As the AIU already explained in post-hearing briefing, the Commission has expressly found that severance costs, even if non-recurring, are recoverable. (AIU Rep. Br., pp. 74-75.)

As the ALJPO recognizes, Staff's proposal to recognize the cost savings from the workforce reduction, but disallow the costs necessarily incurred to achieve those savings, is inherently unfair. Staff has not offered any new and compelling reasons why it is appropriate to reduce the AIU's test year operating expenses to account for cost savings associated with the

[5] The AIU concur with Staff's technical correction to the Appendix for AmerenIP. (Staff BOE, pp. 23-24.)

reduction in workforce, while at the same time denying recovery of the very costs incurred to accomplish that savings.

Indeed, Staff does not even dispute the AIU's position that severance costs are generally recoverable through rates. Staff simply claims that the AIU cannot recover these costs in this instance. Staff's reasoning for recommending a disallowance in this case, however, is nothing more than a procedural red herring. In Commonwealth Edison Co., Docket 05-0597, the Commission found that disallowing severance costs "would deny ComEd any recovery of that cost, which removes the incentive created by [83 Ill. Admin. Code] Part 285.2315 to initiate such programs." Order (July 26, 2006), p. 90. But Staff claims that the AIU are not entitled to recovery of that cost in this instance because the AIU did not include any costs related to its workforce reduction in their initial Part 285 filing. Staff, however, completely ignores the fact that the AIU could not provide information to the Commission at the time it filed its case concerning a workforce reduction that had yet to be implemented, much less announced.

In her direct testimony, Staff witness Ebrey described a September 4, 2009 news article describing a "proposed buyout and possible layoffs" of AIU employees expected to occur by November 1, 2009. (Staff Ex. 1.0 (Ebrey Dir.), p. 41.) Ms. Ebrey noted that the buyout and layoffs reflected a "potential change to test year operating expenses," and while the AIU provided "projected savings that could result from the buyout," the "actual savings [were] not determinable currently." (Id.) Ms. Ebrey deferred her revenue requirement adjustments until rebuttal after the AIU provided actual data in discovery. (Id., p. 42; Staff Ex. 15.0, pp. 20-21.)

According to Staff's logic, the AIU had to provide information concerning the employee buyout and layoffs in June 2009, when they filed their direct case, months before the workforce reduction even occurred. But there is not any evidence in the record to indicate that the AIU had devised the workforce reduction program at the time these proceedings began. Under Staff's theory, however, the AIU needed to submit projected cost savings based on hypothetical departures for a program that had not been announced to the public or their own employees. Yet, Staff had the luxury of waiting until rebuttal to propose a revenue requirement adjustment based on the latest data concerning AIU's cost savings, after the program was announced.

It is disingenuous to suggest that the AIU's revenue requirement must be adjusted downward based on an expected decrease in an operating expense due to events that occur during a rate case, but that costs incurred during the rate case that produced the expected decrease should be disallowed. Staff has not provided the Commission with a single reference to any authority that would support this illogical result. Staff's exception concerning the disallowance of severance costs should be rejected.[6]

8. Public Utilities Revenue Act Tax

The ALJPO adopts the calculation of the AIU's Public Utilities Revenue Act ("PURA") tax agreed to by the AIU and IIEC. (ALJPO, p. 108.) The ALJPO specifically found that the AIU's

[6] The AIU agree that the Appendices to the ALJPO should be adjusted so that the incentive compensation portion of the workforce reduction reflects the Final Order's conclusion regarding the level of recoverable incentive compensation expense. (Staff BOE, pp. 25-26.) The AIU also agree that the payroll tax associated with the workforce reduction should be based on a rate of 7.65%. (Id., p. 26.) The AIU agree with Staff's suggested approach to include Staff's adjustment in its initial brief in the Final Order's appendices, as well as Staff's separate adjustment in its brief on exceptions to reflect the amortization of severance costs over three years. However, to the extent the Final Order modifies the recoverable level of incentive compensation expense, the incentive compensation portion of the workforce reduction must be adjusted accordingly. The AIU also note that a correction should be made to the calculation in Staff's Initial Brief. On Appendix E, Page 14 of 17, column (c), line 16 should be $52,644 rather than $62,644. The correct amount can be found on the response to Staff data request TEE 18.02 (line 16), as well as Ameren Exhibit 51.9, Schedule 3 IP-E, Page 2 of 2, column (c), line 5.

proposal, which utilized weather-normalized kwh sales applied to the statutory rate and was modified to reflect the credits or refunds they received, was appropriate. (Id.)

Staff takes exception to the ALJPO's conclusion, rearguing that there is no evidence that the AIU's share of the PURA tax will increase. (Staff BOE, pp. 28-29.) Staff's complaints about the share of the tax, however, cloud the issue. The purpose of the AIU's adjustment is to calculate with reasonable certainty the AIU's actual amount of PURA tax exposure for the test year. The AIU and IIEC's calculation of the PURA tax results in a known and measurable change in the AIU's test year expense as booked. Staff's proposal, which fails to remove prior period adjustments recorded on the AIU books in 2008 and which fails to account for weather-normalized sales, instead relies solely on a "snapshot" of the test year expense per the AIU's books. As discussed below, the AIU and IIEC's approach, and not Staff's approach, is the appropriate means to establish a just and reasonable amount of recoverable expense for this item for ratemaking purposes.

As explained in testimony and prior briefing, it is necessary to adjust the AIU's PURA tax to restate the test year expense in a manner consistent with the use of weather-normalized kilowatt hour sales delivered in the calculation of the revenues at present rates. (Ameren Ex. 2.0E Rev. (Stafford Dir.), p. 17.) By using kwh sales to calculate delivery service revenues, there is a matching of sales used to derive revenues with sales used to calculate expense. (Ameren 51.0 2d Rev. (Stafford Sur.), p. 24.) The AIU multiplied weather-normalized sales by current statutory tax rates to arrive the pro forma amount for this tax. (Ameren Ex. 2.0E Rev., p. 17.) In addition, by adopting the IIEC's approach to reflect periodic credits or refunds, the AIU eliminated the impact of any adjustments to prior period accruals that may exist with the per books distribution tax expense. (Ameren 51.0 2d Rev., p. 24.) Staff's approach, however, to allow recovery of only estimated 2008 expense accruals net of prior period adjustments per the AIU's books mismatches adjusted weather-normalized revenues with per books estimated expenses.[7] (AIU Rep. Br., pp. 75-76.) Thus, the AIU and IIEC's approach of adjusting the booked expense based on weather-normalized sales data and credits/refunds is appropriate to establish the amount of PURA tax recoverable in this proceeding. Staff's exception to eliminate the entirety of the AIU's pro forma adjustment should be rejected.

9. Transportation Fuel Expense

The ALJPO determined that the AIU's three-year average for calculating the AIU's gasoline and diesel fuel costs was superior to Staff's proposed 12-month average. (ALPJO, p. 112.) The ALPJO specifically found that Staff's proposal could lead to fuel prices that are unreasonably high or low. (Id.) Staff, however, balks at the ALJPO's conclusion, claiming that it provided "a clear and logical reason" for its measurement period, whereas the AIU's measurement period is "unsupported." (Staff BOE, p. 31.) But as the AIU demonstrated, Staff's calculation of average fuel costs was fundamentally flawed. (AIU Init. Br., pp. 99-105; AIU Rep. Br. 76-79.) By averaging fuel prices from only a one year period (Aug. 2008 – July 2009), Staff relied on a narrow period of declining and depressed fuel prices not representative of the fuel costs that the AIU will experience when new rates will be in effect.

Staff claims that the AIU's proposed three-year measurement period included gasoline and diesel fuel prices that the AIU experienced during the 2008 test year that are excessive.

[7] In addition to weather normalization, test year sales were adjusted to reflect continued growth in incremental energy efficiency programs and customer load reductions in Ameren IP and AmerenCILCO service areas. (Ameren Ex. 16.0E 2d Rev. (L. Jones Dir.), pp. 46-47.)

(Staff BOE, p. 30-31.) But in making its own proposed adjustment, Staff itself relies largely on "outlier" 2008 and 2009 fuel prices, when the United States was in the midst of an economic recession and fuel prices plummeted. (Ameren Ex. 61.3; Tr. 636.) Staff can hardly object to the inclusion of a period of higher prices in the calculation of an average price over three years, when Staff itself relies solely on a narrow period of declining and depressed prices. A three-year period at least averages high and low prices, whereas Staff's one-year period does not.

Even though fuel prices rose during the first half of 2008, it is appropriate to include those higher prices in a calculation of average costs (as the AIU did), just as it is appropriate to include in the same calculation Staff's abnormally low prices (as the AIU did). What is <u>not</u> appropriate is to calculate an average cost that is heavily skewed by the abnormally low prices (as Staff did). Indeed, based on Staff's "clear and logical" reasoning, fuel prices from late 2008 and early 2009, which were some of the lowest prices experienced in years (Ameren Ex. 61.3) should be excluded as "outliers" from Staff's own calculation of average fuel costs.

Staff also claims that its proposal was "consistent with the current projection of transportation fuel costs that AIU will experience when its rates go into effect." (Staff BOE, pp. 30-31.) But the EIA's price forecasts do not save Staff's flawed normalization. Indeed, the AIU's calculated average fuel prices for gasoline (2.83) and diesel fuel (3.05) are in line with average fuel prices predicted for 2010 for gasoline (2.88) and diesel fuel (2.96), based on the December 2009 EIA forecast. (AIU Init. Br. 100-01, 104; AIU Rep. Br. 78-79.) In contrast, Staff's calculated average price is 37 cents lower for gasoline (2.51 vs. 2.88) and 18 cents lower for diesel fuel (2.78 vs. 2.96) when compared to that forecast. (<u>Id.</u>) The EIA forecasts do not foreclose the possibility that fuel prices could rapidly rise in 2010, just as they failed in 2007 to predict the dramatic rise in fuel prices that occurred in 2008. (Id.) Rather, the EIA forecasts further demonstrate how an average price calculation can be skewed by reliance on a narrow 12-month period of declining and depressed prices.

Contrary to its claims, Staff's proposal fails to calculate a just and reasonable level of recoverable fuel expense. Its exclusion of higher 2008 prices and reliance on lower 2008 and 2009 prices does not adequately account for the volatility of fuel prices, understates the AIU's actual fuel price in recent years, and produces a normalized expense not representative of what the expense likely with be when rates from this proceeding will be in effect. The Commission should reject Staff's exception to use its proposed adjustment to test year fuel expense.

10. Account 887, Maintenance of Mains

The ALJPO determined a level of recoverable expense for AmerenIP's Account 887 (Maintenance of Mains) by averaging the AIU and Staff's proposed normalized expense. (ALJPO, p. 116.) Staff, however, objects to the ALJPO's decision to split the difference. (Staff BOE, pp. 32-33.) Staff claims that its calculated average expense, which uses calendar 2006, 2007 and 2008 data, is more appropriate than either the AIU's proposal, which includes more recent 2009 data, or the ALJPO's compromise. The AIU, however, demonstrated that this account's expense levels in 2008 and 2009 are more representative of the amount of expense that AmerenIP will incur during the period rates will be in effect, rather than expense incurred in 2006 or even 2007.

Staff argues that 2009 data cannot be used to normalize this expense because AmerenIP has not demonstrated that the increase in its 2008 expense is just and reasonable. But Staff's argument obfuscates the issue of the appropriate normalization period. The issue is not whether AmerenIP established the appropriateness of its requested 2008 test year expense. The AIU proposed a normalized expense to calm Staff's fear that the increase in test year expense for this account was not adequately supported. Rather, the issue centers on whether more recent actual 2009 data, under the AIU's proposal, or older 2006 data, under Staff's proposal, should be used when calculating a normalized expense for this account. The AIU demonstrated that Account 887's expense for the 12 months ending September 2009 ($4.451 million), when compared to the expense for the 12 months ending September 2008 ($4.318 million) shows that the 2008 test year expense is not unreasonably high and that the expense has in fact leveled off in recent months. (Ameren Ex. 30.5.) Moreover, Staff itself has endorsed the use of 2009 data in making adjustments to other test year expenses for tree-trimming, uncollectibles, storms, transportation fuel costs and company-use and franchise gas amounts. (Tr. 642, 757.) Neither in its testimony nor in its briefing has Staff explained why 2009 data cannot be used to normalize this particular expense.

The account's 2009 data confirms that the test year expense is representative of the level of expense that the AIU will incur in 2010, when rates set in this proceeding will be in effect. Indeed, Staff's claim the ALJPO's compromise "would require AmerenIP ratepayers to reimburse costs that AmerenIP has failed to demonstrate are just and reasonable" (Staff BOE, pp. 32-33) rings hollow, given that Staff itself uses 2008 data in its own calculation. If it is appropriate to use 2008 expense amounts in the calculation, as Staff has done, it similarly appropriate to use 2009 data. Staff's argument that, because 2008 costs were allegedly excessive, 2009 data should be ignored is nonsensical. And Staff's approach of selectively excluding 2009 data from its calculation of this average expense without explanation should be rejected. Although the AIU believe that the ALJPO should have accepted the AIU's normalized amount as the appropriate level of recoverable expense for this account, the AIU do not take exception to the ALJPO's compromise position of averaging the AIU's and Staff's proposals, which is fully supported by the record. The Commission should reject Staff's exception that the ALJPO use outdated 2006-2008 data—and ignore actual 2009 data—to normalize this expense.

12. Overall Reasonableness of O&M Expenses

Only two parties briefed exceptions with respect to the overall reasonableness of AIU's O&M expenses: (1) CUB/AG and (2) LGI. Notably, CUB/AG takes issue with the ALJPO's conclusion that (1) the econometric benchmarking study performed by CUB/AG witness Steven Fenrick is more prone to error and unreliable, and (2) even if the Commission was convinced of the validity of the study, CUB/AG has not provided a method in which the Commission could use the study in these proceedings. (ALJPO, p.133.) CUB/AG's exceptions should be rejected.[8]

Despite CUB/AG's deficient explanation of the record, the ALJPO properly credited AIU witness Ronald Amen's peer-group approach to benchmarking the AIU's O&M expenses against those of other utilities. (ALJPO, pp. 120-23.) Mr. Amen did not just create "slides." Mr. Amen conducted sixteen different studies – using the same type of FERC account level data relied upon by CUB/AG and obtained from FERC Form 1 and Form 2 filings. Mr. Amen analyzed the data through a series of objective, comprehensive benchmarking studies to compare the AIU's *actual* O&M expenses against other electric, gas, and combination utilities. (Id.) The results of

[8] LGI also take exception to the ALJPO's conclusion on this issue and recommends that the ALJPO be amended to accept LGI's various reporting and monitoring recommendations. As discussed elsewhere, the ALJPO appropriately rejects LGI's unnecessary and imprudent recommendations. (See infra, pp. 22-25.) All of LGI's exceptions to this issue should be rejected here as well for similar reasons.

his sixteen peer-group benchmarking studies, transparent and comprehensive in number and scope, demonstrated that the AIU effectively controlled O&M expenses because they consistently performed better than their peers on a cost per customer basis. (Id.)

In contrast to Mr. Amen's studies and testimony, Mr. Fenrick's report and testimony contained fatal errors and other shortcomings, which were identified by the AIU, and noted in the ALJPO. The Commission need look no further than the following admissions by Mr. Fenrick:

- His econometric benchmarking study should not be used to set an authorized level of operating expenses. (Tr. 471, lines 9-20);
- No review or analysis of any of the expenses of the AIU's gas operations ("Q. You have no opinion about the AIU's efficiency in managing O&M costs for the gas utilities? A. That's correct." (Tr. 437, lines 4-7));
- No review or analysis of 18% of the expenses relating to the AIUs' electric operations ("Q: For your electric utility only study, you focused on distribution and customer care and administrative and general costs . . . [which] only represent a portion of O&M for the companies, correct? A. That's correct; I believe 82 percent." (Tr. 437, line 11 - 438, line 3));
- No review or analysis of any of the subcategory line item expenses that make up the AIU's O&M expenses as reported on their respective FERC Form 1. ("Q. You haven't identified any specific distribution, customer care or A&G expense which should be eliminated or reduced or affected in anyway, shape or form, right? A. Right." (Tr. 441, lines 14-18));
- Offered no opinion on the reasonableness of any of those subcategory line item expenses. (Tr. 441);
- No familiarity with any specific O&M expense practice that might be the cause of the purported inefficiency about which he testified. (Tr. 441); and
- Deliberately chose to discard the data used to create his "numerous" alternative models that he rejected before arriving at the model in his report, and did so despite anticipating that the AIU would request that very information. (Tr. 474–75 (Q: "Now, you must have anticipated that we were interested in [the] process by which you came up with your final model, and that's why we wanted these alternative models, right? You anticipated that, didn't you? A. Yes.") (Tr. 474, lines 15-20)).

Additionally, AIU witness Dr. David Sosa identified and testified about the Mr. Fenrick's multiple fatal specification errors like the omission of relevant variables (e.g., total sales from

A&G model) and the inclusion of irrelevant variables (e.g., improper wage level comparisons and percentage undergrounding). (Ameren Ex. 46.0 (Sosa Reb.), pp. 9-20; Ameren Ex. 68 Rev. (Sosa Sur.), pp. 18-20; Tr. 447-466.) These errors, among others, seriously bias the results of Mr. Fenrick's econometric cost model, rendering it an inappropriate basis for drawing any conclusions. (Ameren Ex. 46.0, pp. 9-20; Ameren Ex. 68 Rev., pp. 18-20). Dr. Sosa also established that Mr. Fenrick improperly relied on estimated expenses that were statistically indistinguishable from the AIU's actual expenses, and thus – at worst – Mr. Fenrick's flawed model shows that the AIU are average cost performers. (Ameren Ex. 46.0, pp. 17, 22; Ameren Ex. 46.1; Ameren Ex. 68.0 Rev., p. 21.)

The ALJPO correctly concluded that Mr. Fenrick's single econometric benchmarking study was "complex" and "more prone to error." The record substantiated the ALJ's valid concerns and led to the ultimate conclusion that "[i]n this instance, the Commission is not convinced that the AG/CUB's study demonstrate what it contends that it does . . . [and secondly,] there would be no way to utilize the AG/CUB study for ratemaking purposes in this proceeding, even if the Commission were fully convinced of its validity." (ALJPO, pp. 133-34.) While advocating their proposed exception, CUB/AG make no mention of these fatal errors and thus provide no relevant support for their exception to the ALJPO. The record establishes that CUB/AG's reliance on Mr. Fenrick's unreliable and flawed model is misplaced. And CUB/AG (still) have not and cannot point to any source or cause of any alleged inefficiency of O&M cost performance purportedly identified by Mr. Fenrick. CUB/AG thus cannot rely on Mr. Fenrick to identify any O&M expense incurred in the 2008 test year that they could advocate eliminating, reducing or adjusting in anyway. This conclusion was identified, and supported, by the ALJPO.

The ALJ's conclusions should not be altered, and the Commission should reject CUB/AG's proposed exception.

VI. COST OF CAPITAL/RATE OF RETURN

G. Cost of Common Equity

Not content with the shockingly low returns recommended in the ALJPO, Staff seeks to squeeze blood from a stone, and implores the Commission to reduce them even further. CUB/AG challenge the Commissioners to adopt CUB's make-believe ROE methodology. IIEC seeks to tweak the ROEs in the ALJPO – downward, naturally.

For all the reasons we put forth in the initial brief on exceptions, and for those reasons we proffer here, the ROEs for the AIU need to go up, not stay the same or decrease.

Reply to Staff

Staff is generally satisfied with the unadjusted ROEs, but complains that the ALJPO erroneously averages Staff's non-constant growth results with IIEC's. The AIU agree, but as we explained fully in the brief on exceptions, the error was to abandon the roadmap from the recent Peoples decision in Docket 09-0166/0167. Staff's complaint that its non-constant growth results are superior to IIEC's utterly misses the point. The Commission should reject Staff's exception and should modify the unadjusted ROEs in the manner, and for the reasons, set forth in the AIU's brief on exceptions.

Reply to CUB/AG

CUB/AG argue that the Commission should adopt Mr. Thomas's approach, which, to our knowledge, has never been adopted anywhere, anytime, by any regulatory body setting rates for anything. But, CUB/AG seem to argue, there is always a first time. Indeed. The Commission has been properly reluctant to take a flyer on Mr. Thomas's untested approach, and CUB/AG offer no new or compelling reason in their exceptions as to why the regulatory equivalent of jumping off a cliff would be a good idea now.

Reply to IIEC

IIEC quibbles about the rejection of its CAPM methodology and the ALJPO's sole reliance on the Staff. We addressed the ALJPO's error in arriving at its CAPM result in our brief on exceptions.

Uncollectibles Adjustment

In their brief on exceptions, the AIU explained the unfairness and unsoundness of the ALJPO's decision to retain even part of the Staff's calculation of an adjustment for the effect of an uncollectibles rider. Staff complains that the ALJPO should make Staff's full recommended adjustment. In doing so, Staff: 1) admits to the imprecision of the part of the adjustment the ALJPO does accept; and 2) indicates that Staff either does not understand or seeks to frustrate the General Assembly's intent in providing for an uncollectibles rider.

Staff's first attack on the ALJPO is that the part of the adjustment adopted by the ALJPO is not specific to Ameren. In other words, while the other adjustments to the ROE purportedly reflect the specific circumstances of the AIU relative to the sample group, what the ALJPO did was adopt Staff's guess as to what an uncollectibles rider does for a company in general, and not for the AIU. Thus, while Staff trumpeted the precision of its adjustment to the ALJs, it now admits that the only part of the adjustment adopted in the ALJPO is not precise at all.

Moreover, Staff makes no effort to demonstrate that the uncollectibles rider makes the AIU less risky relative to the sample group. That is supposed to be the purpose of the adjustment – to reflect relative differences in risk when compared to the sample group. Staff now admits that the adjustment does not do this.

Further, what Staff does not admit is that it is merely making a guess – educated or otherwise – as to what credit rating agencies would do after implementation of an uncollectibles rider. Staff's adjustment is not based on what ratings agencies have done in the past. Rather, it is based entirely on what Staff thinks ratings agencies would do, based solely on Staff's arbitrary weighting of criteria that ratings agencies use. The agencies do not disclose what relative weight they give each factor, so Staff assigned its own weightings, and then assumed that is exactly what the ratings agencies would do.

All Staff's argument in its brief on exceptions does is highlight the imprecision and guesswork in the half of its analysis that the ALJPO adopts.

Staff's exceptions also indicate its implicit belief that Section 19-145 of the Public Utilities Act was intended to be revenue neutral. In other words, Staff's apparent belief is that the General Assembly did not intend for utilities to collect one dollar more from customers than they did before adoption of Section 19-145. Staff's belief is whatever additional revenue is collected because base rate recovery was deficient has to be taken away in rate of return.

No utility would implement an uncollectibles rider if Staff's interpretation were correct. There would no incentive to do so. It would make no difference to the bottom line if a rider is implemented, so no one would bother. Indeed, the General Assembly is unlikely to have troubled itself with the enabling legislation if there were to be no effect on rates.

The record in this case indicates, however, that base rate recovery has been inadequate. Base rates have consistently understated uncollectibles. The intent of the legislation was clearly to allow better matching of costs and revenues. If all the rider does is move costs around and keep revenues the same, there is no better (or different) matching. In Staff's view, however, a utility with a rider that receives the same revenue as it did before the implementation of the rider is somehow less risky. That simply cannot be the case – the revenue and costs remain the same.

For all these reasons and those set forth in the AIU's brief on exceptions, Staff's exception should be rejected and the AIU's ROEs and rates of return should be modified in Final Order in the manner we have proposed.

VII. COST ALLOCATION

B. Contested Electric Issues

2. Cost Allocation of Primary Distribution Lines and Substations

The AIU agree with the IIEC's arguments regarding the allocation of primary lines and substations using Non-Coincidental Peak ("NCP") demand allocators rather than the single Coincidental Peak methodology ("1CP") proposed by Staff. (IIEC BOE, p. 40-47.) The ALJPO's acceptance of the 1CP methodology overemphasizes system peak in the allocation of substation and primary line costs among customer classes. The result is that customers with peak usage falling in a time of year outside of the overall system peak (summer) avoid cost responsibility despite the fact they certainly make use of the plant and equipment from which they receive distribution service. IIEC is correct that the utility sizes and constructs substations and primary lines to serve local demand. That load may or may not coincide with overall system peak, and thus the use of a 1CP methodology does not correctly allocate costs among classes. (IIEC BOE, p. 45-46; Ameren Ex. 41.0 (Althoff Reb.) pp. 5-6; Ameren Ex. 56.0 Rev. (Althoff Surr.), pp. 2-8)

As IIEC correctly states, NCP is the preferred approach to allocating distribution plant and equipment for substations and primary lines.

3. Allocation of Electric Distribution PURA Tax

IIEC's lengthy arguments concerning the allocation of the PURA tax, though admirable in effort, are lacking in merit. (IIEC BOE, pp. 47-60.) Through pained analysis, IIEC attempts to statistically quantify the legislative mental prerogative underlying the PURA statutory provisions in a manner that reduces its constituents' exposure to tax expense responsibility – an endeavor that ultimately adds little substantive assistance to resolving the issue at hand.

IIEC's discussion of the historical origins of tax provisions cannot avoid the stark, black and white reality of the PURA tax as its assessed today – it is assessed to utilities on a kWh basis. (Tr. 146.) The plain language of the statute speaks for itself. (See AIU Reply Br., p 131-132.)

If one accepts the premise that cost causers should be cost payers, it only can follow that customers using more kWh will cause the utility to be assessed more taxes than customers that use less. Thus, the allocation of the PURA tax on the basis of energy rather than demand is a matter of simple mathematics, and, accordingly, the ALJPO is correct with regard to this issue.

An additional inescapable fact is that the tax is already assessed on an energy basis for the largest electric utility in the state, ComEd. (ALJPO, p. 242.) While the AIU would agree that the decision to allocate costs in a ComEd docket is not *res judicata*, the fact that the methodology is accepted for another utility supports the adoption of the same methodology in this case in order to promote a consistent allocation of the PURA tax throughout the state. (See IIEC BOE, p. 51.)

Much of IIEC's argument concerns the crediting mechanism that maintains the tax revenues collected at levels consistent with those of historical versions of the tax. But the IIEC cannot deny that while the tax liability may be capped, it is nonetheless clearly and unequivocally assessed on an energy basis. Accordingly, the ALJPO's conclusion that allocation of these costs should be on an energy basis is correct and IIEC's exception to the contrary should be rejected.

4. Overall Suitability of AIU's COSS

IIEC's contention that the AIU did not allocate costs of primary substations, distribution poles, and other plant to certain DS-3a, DS-3b, and DS-4 customers taking secondary service is incorrect and misleading. (IIEC BOE, 60-62.) The record evidence proves that customers in these classifications were in fact allocated all appropriate costs.

In its exception, IIEC fails to acknowledge the merits of the AIU's refined methodology of employing both supply and delivery voltages to develop allocators used in their ECOSS studies. The AIU simply cannot assign costs from FERC account 362 twice for the same customer. Because the AIU used both supply and delivery voltage in the development of allocators, it must ensure that it assigns customers costs from FERC account 362 only once (or any other FERC account for that matter).

Indeed, the AIU's cost of service methodologies and rate design were developed to complement one another, and are precise in use of both supply and delivery voltages to allocate costs appropriately given the AIU's rate structure. (See Ameren Ex. 16.0E 2d Rev. (L.

Jones Dir.), p. 38-39) All costs prior to final transformation are allocated to customer classes based on supply voltage. Costs after final transformation, if any, are allocated based on delivery voltage. Similarly, DS-3 and DS-4 Distribution Delivery Charges are based on a customer's supply voltage. (Id.) If a customer uses Company-provided transformers or substations to transform their supply voltage to delivery voltage (the voltage where company facilities end and customer facilities begin), they will pay the Transformation Charge or a rental charge. (Id.) Thus, customers are often metered on the low side voltage of final transformation and pay a Customer and Meter charge based on the lower voltage as well. Customers are often supplied at a higher voltage level than they are delivered, and thus their costs show in two columns in the COS model displayed in the AIU's E-6 schedules. This is exactly what IIEC is observing where 1,936 DS-3a, DS-3b, and DS-4 secondary voltage customers do not appear to have any allocated costs from FERC Accounts 362, 364, 365, 366, and 367 (Station Equipment, Poles and Towers, Overhead Conductors and Devices, Conduit and Underground Cable, respectively). These customers have a "secondary" delivery voltage and thus the customer and meter related assets are allocated to the secondary voltage category. These customers' supply voltage is at primary (or higher) and thus the assets listed in the FERC accounts above are allocated to the primary voltage (or higher) category.

Further, IIEC only raised this matter at hearing after all testimony has been filed. (Tr. 582-593.) Therefore, the AIU were never afforded an opportunity to present schedules and pre-filed testimony tracking the allocation of costs in a manner comprehensively responsive to the inferred allegations in IIEC's cross examination questioning.

Moreover, IIEC's allegation is based upon inferences that IIEC made concerning a wide array of statistical data displayed on the AIU's E-6 schedules filed pursuant to Part 285. (Id.) Part 285 E-6 schedules display specific cost of service related data. 83 Ill. Admin. Code 285.5110. While the data must be displayed in a manner responsive to the regulation, the companies are not required to use the data as part of their position advocated in testimony. Thus, the IIEC's arguments are clearly premised on data displayed on the E-6 schedules and appear to be based upon mistaken inferences about how the information was used by the companies in developing allocations.

The AIU's cost of service witness, Ms. Althoff, refuted the assertions made by the IIEC during questioning and attempted to explain the matter during hearing. (Tr. 619.) A review of the transcript exposes IIEC's claims that the transcript provides a "clear record" as unfounded. IIEC asked Ms. Althoff to consider various mathematical equations to support its contentions and agree to certain ambiguous points based thereupon. (Tr. 582-592.) Obviously, the witness stand does not afford the time or resources to the witness to conduct cost of service runs and track costs that have been analyzed using a cost of service model. Nonetheless, Ms. Althoff made every effort to explain why the IIEC's assertions and underlying assumptions were incorrect, and provided a general explanation of her methodology. (Tr. 590-593; 618-619.) She also provided an explanation of her use of both supply and delivery voltages in her rebuttal testimony. (Ameren Ex. 41.0, pp. 6-8; Ameren Ex. 41.1.)

IIEC's allegations are mistaken, and its confusing line of questioning at hearing cannot sustain the wholesale abandonment of the weight of the evidence supporting the validity of the

AIU's ECOS studies offered by Ms. Althoff, or those sponsored by Staff witness Mr. Lazare. (ICC Staff Ex. 7.0.)

In response to IIEC's assertions regarding burden of proof and what it describes as "legal issues," it should be noted that the ALJPO did not accept the allocations used in the AIU's ECOSS, but instead adopts the modified studies proposed by Staff witness Mr. Lazare. (IIEC BOE, p. 61; ALJPO, p. 235 (Mr. Lazare used a CP method for ECOS allocations, not the NCP method as advocated by the AIU).) The IIEC did not cross examine Mr. Lazare regarding this issue. (Tr. 124-140.) Thus, notwithstanding confusion associated with alternative rate design outcomes proposed by the IIEC in its BOE, the exceptions offered by IIEC targeting the AIU's cost of service studies are misdirected.

Further, IIEC fails to provide authority supporting the contention that the AIU bear the evidentiary burden for sustaining the cost allocation recommendations proposed by another party. The AIU did establish a prima facie case supporting its proposed ECOSS and rate design, when it offered testimony and schedules. The IIEC carries the burden of supporting its proposed modification to the AIU's cost of service and rate design proposals. Given the significant amount of testimony and exhibits regarding cost of service allocations and studies, it simply is untenable to argue that both Staff and the AIU failed to provide sufficient evidence. (See Ameren Exs. 17.0, 41.0, 56.0 Rev.; ICC Staff Exs. 7.0; 21.0). The substantial volumes of data provided by both AIU witness Althoff, as well as Staff witness Lazare, are more than sufficient to support the validity of either the AIU or Staff cost allocation proposals advanced in this docket. The only proposal not supported by record evidence is IIEC's proposal to allocate costs on an across-the-board basis. To grant the relief requested by the IIEC and depart from either the AIU or Staff's ECOSS would be a disservice to the ratemaking process and lead to rates that significantly depart from valid cost of service indicators in a manner that would appear to allow IIEC constituents to essentially avoid any measure of a bill increase as a result of this case. (See AIU Resp. to ALJ's Post-hearing Data Request ("ALJDR").)

In fact, IIEC's arguments regarding the validity of the AIU's ECOSS actually support the position of the AIU as articulated in its BOE regarding the use of both supply and distribution voltages in allocator development. (AIU BOE, pp. 42-43.) To the extent that supply voltage is used without any reference to delivery voltages, certain distribution plant used to serve customers with divergent supply and delivery voltages will result in those customers avoiding cost responsibility for plant they use – the very result that IIEC alleges it is aggrieved by. IIEC cannot have it both ways – it cannot claim that the AIU failed to allocate costs to certain customers, while at the same time asking the Commission to accept an allocation methodology that enables its constituents to avoid allocations for plant and equipment they use.

In its support of an across-the-board rate design, IIEC attempts to bolster its arguments by reiterating its litany of incorrect assertions about the AIU's ECOSS. The items listed by IIEC in truth represent IIEC's methodological differences with the AIU rather than "errors" as it suggests. The AIU have thoroughly rebutted these arguments in post-hearing briefing and see no need to reiterate those arguments here. (AIU Rep. Br., pp. 121-128.)

As shown on the AIU's Response to the ALJDR, the DS-4 high voltage and 100+ kV customers will be receiving almost no increase pursuant to the ALJPO. An across the board increase could reduce the bill impact to IIEC's constituent members even further and without justification. IIEC attempts to capitalize on the AIU's acknowledgement that its ECOSS are not perfect and could be improved after the conclusion of this case. (IIEC BOE, pp. 60-61.) However, the AIU's recognition of the lack of perfection in ratemaking is an acceptance of reality rather than point of weakness and does not compromise the reasonableness of the rate design that will result in this case. No statute or precedent supports a standard of perfection in ratemaking. Further, the AIU's candid acknowledgement holds true for any case or any ECOSS study — there are always ways to refine data and allocate costs more effectively. IIEC's own cost of service witness, a former utility employee and cost of service expert made the same acknowledgement during hearing. (Tr. 731.)

For the above stated reasons, the ALJPO comes to the correct conclusion with regard to this issue and the Commission should reject the arguments and exception language offered by the IIEC to the contrary.

IX. RATE DESIGN/TARIFF TERMS AND CONDITIONS

D. Contested Gas Issues

3. Banking Under Rider T - Gas Transportation Service

Staff continues to advocate workshops regarding Rider T bank unbundling. The Staff advocates that the Commission require the AIU to adopt either: (a) the Peoples, Nicor, North Shore methods (without any changes) as Staff proposed in these rate cases, or (b) the Rider T unbundling mechanisms agreed by the parties in the workshop process.

The AIU expressly supported a workshop process designed to achieve the most reasonable Rider T bank unbundling approach based on the input of and discussions among all interested parties including Staff, other parties, and the AIU. (See, e.g., AIU Rep. Br. at 150.) The record in this proceeding contains abundant evidence of failures of the Nicor, Peoples, and

North Shore models when applied to the AIU. (See, e.g., Ameren Ex. 44.0, pp. 21-33; Ameren Ex. 64.0, pp. 12-26.) The ALJPO rightfully recognized that the AIU have raised significant doubt regarding the appropriateness of applying Nicor, Peoples, and North Shore models to the AIU. (ALJPO, p. 50.) The AIU remain committed to reviewing the Nicor, Peoples, and North Shore models along with any other unbundling models proposed by the workshop participants. (Id.)

The AIU are willing to participate in good faith in any workshop. The AIU urge the Commission simply not to prejudge any issue or unduly limit the ability of workshop participants to consider any particular proposal.

E. Contested Electric Issues

1. Overall Rate Design

After reviewing IIEC's arguments, the AIU agrees the matter concerning the presentation of the PURA tax on customer bills is not entirely clear in the ALJPO. (IIEC BOE, pp. 70-71.) The ALJPO agrees with the position of the AIU and Staff with regard to the allocation of the tax associated revenue. (ALJPO, p. 242.) However, the ALJPO instructs the AIU not to collect the charge through an additional line item. (ALJPO, p. 293.) Reading these two provisions together, the AIU allocated the PURA tax according to energy, but merged the allocated revenue into the distributed delivery charge that is assessed to DS-3 and DS-4 customers on a demand basis, rather than energy basis. The AIU did so to avoid the creation of a separate line item. This approach is reflected in the AIU Response to the ALJDR. To the extent the AIU have incorrectly interpreted the order, it would support limited revisions to the ALJPO for the purpose of providing clear instructions. If there is unintended inconsistency in the ALJPO, the AIU would prefer to assess the charge on an energy basis and present that format on the customer bills in order to be consistent with the manner in which the tax is allocated.

While the AIU may agree there is a lack of clarity, it cannot accept the IIEC's proposed changes to the ALJPO. For the reasons stated in SectionVII.B.3 above, the exceptions sought by the IIEC should be rejected.

2. Rate Moderation/Mitigation

The AIU opposes the IIEC's proposed changes to the ALJPO concerning analyzing bill impacts on a total bill basis. (IIEC BOE, p. 71-72.) The matter is relatively simple. When analyzing the impact that an increase will have on a customer's bill, it is important that the Commission consider the totality of the bill presented. The AIU discussed this concept thoroughly in its Reply Brief. (AIU Rep. Br., p. 171-172.) For large customers that pay significantly low rates to begin with, ignoring the relatively minor component that delivery charges present on a total bill basis, will serve to exaggerate the percentage impacts. (See AIU's Response to ALJDR.)

3. DS-3 and DS-43 Distribution Delivery Charges

The ALJPO adopts Staff's position with respect to the DS-3 and DS-4 distribution delivery charges. (ALJPO, p.301.) Kroger is the only party that briefed an exception to this aspect of the ALJPO. Specifically, Kroger reiterates its position from its initial briefing, and asks the Commission to "initiate steps to move [the DS-3 and DS-4] rate schedules closer together over time." (Kroger BOE, p.7.) Kroger then suggests that the Commission should "remove 50 percent of the differential between the DS-3 and DS-4 Distribution Delivery Charges, with an adjustment to recognize DS-4 reactive power revenues." (Id.) But, in support of its position, Kroger does not present *any* exception language nor provide the Commission with even general revisions to the ALJPO for consideration. This alone warrants denial of Kroger's request. See 83 Ill. Admin. Code 200.830.

Even if the Commission were to overlook Kroger's absence of exception language, the request should be rejected on the merits. While the AIU acknowledges that there is value in closing the rate gap between DS-3 and DS-4 rate classes, it believes that Kroger's proposal goes too far towards that goal. (AIU Rep. Br., p.182.) As both the AIU and the ALJPO note, Kroger has yet to prepare bill impacts for the affected customers. (Id.; ALJPO, p. 301.) As the Commission concluded in the ALJPO, Kroger's proposal lacks "any evidence on how it would impact AIU's other customers." (ALJPO, p. 301.) Accordingly, the AIU asks the Commission to reject Kroger's position, and maintain the ALJPO provisions as they currently stand with respect to DS-3 and DS-4 distribution delivery charges.

4. DS-5 Fixture and Distribution Delivery Charges

The ALJPO recognized the AIU's efforts "to move the Fixture Charges closer together while bearing cost of service in mind." (ALJPO, p. 304.) The ALJPO further noted that while "the numbers are apt to change after AIU reruns the COSS," it found "the methodology reasonable for the DS-5 class for purposes of this proceeding." (Id.) In contrast, the ALJPO recognized that "it is not clear . . . how Staff's approach is designed to move the Fixture Charges closer." (Id.)

Nonetheless, Staff now contends that the AIU's proposal would "not only equalize lighting rates across utilities, it would also arbitrarily raise the revenue allocations for the lighting class above the associated cost of service." (Staff BOE, p.51.) Staff instead "proposes to set lighting rates by adjusting the Companies' proposed lighting rates on an equal percentage basis to conform to their respective class revenues." (Id., p.53.)

Staff seems to be conflating issues. Even Staff recognizes that its proposed "approach does not make the same progress towards equalized rates as the AIU proposal," but justifies its approach by claiming that "it is necessary to ensure that lighting customers pay their fair share of utility costs and nothing more." (Staff BOE, p. 53.) However, Staff's contention that the AIU's proposal does not conform to the class COS is based on a misunderstanding of what has transpired in these dockets. Pursuant to the ALJPO, the AIUs were directed to follow the Staff revenue allocation approach, with the caveat that DS-3 and DS-4 were also to be evaluated based on their voltage "subclass." (ALJPO, p. 301.) When re-running the COSS, the AIU thus interpreted that directive to mean that the DS-5 class was to be set at cost of service, subject to the 150% maximum increase.

As a result, when re-running the COSS, the AIU scaled the DS-5 charges to the final revenue requirements in keeping with the ALJPO. For AmerenCILCO, the AIU adjusted rates DS-5 Fixture and Distribution Delivery Charges uniformly. (See AIU Resp. to ALJDR, Ex. 1.) For AmerenCIPS, the AIU adjusted the Distribution Delivery Charge, but not lower than the level of the Distribution Tax. (See AIU Resp. to ALJ DR, Ex. 2.) Then, the AIU reduced the Fixture rates uniformly to conform to the target revenue requirement for the class. (Id.) For AmerenIP, the AIU only adjusted Fixture Charges uniformly. (See AIU Resp. to ALJ DR, Ex. 3.) Distribution Delivery Charges were held at the level the AIU originally proposed. (Id.)

Despite Staff's contentions to the contrary, the AIU's approach keeps with the Commission's directive to set rates to recover allocated Cost of Service for DS-5 for each respective AIU. The ALJPO properly addresses Staff's concerns regarding the proper overall DS-5 revenue allocations Furthermore, the AIU's methodology for conforming prices to the final revenue requirement moves fixture prices closer to uniformity. Accordingly, the AIU respectfully requests that the Commission reject Staff's proposed exception on this issue.

5. Combined Billing of Multiple Meters

The AIU are neutral to the supply choices of its customers, including the choice to self-generate electricity from a Combined Heat and Power (CHP) facility fueled by natural gas or other source. However, policies designed to advance CHP within the AIU service territories require thorough analysis of rate implications and should be implemented in a manner mindful of consequential impacts to existing rate structures as well as implications for other customers.

Accordingly, the AIU disagree with the exceptions proposed by IIEC, requesting that the Commission mandate the filing of a yet to be drafted combined metering tariff for all CHP facilities within 135 days of the Final Order. (IIEC BOE, pp. 73-74). Sufficient time must be give to addressing specific tariff language, engage in stakeholder discussion, and conduct bill impact analysis. Furthermore, once developed, any new tariff language offering combined metering service must be considered in the context of a broader examination of bill impact factors in order to properly align costs, revenues, and rate recovery.

Additionally, if accepted by the Commission, IIEC's proposed exceptions would impair the AIU's opportunity to recover its revenue requirement as established in the Final Order. Pursuant to long standing authority governing ratemaking, the AIU are entitled as a matter of law to rates that provide a reasonable opportunity for cost recovery. (See Bluefield Waterworks v. Public Service Comm'n of West Virginia, 262 U.S. 679, 690 (1923); Smyth vs.

Ames, 169 U.S. 466, 547 (1898); Federal Power Comm'n vs. Natural Gas Pipeline Co. of America, 315 U.S. 575, 606-607(1942) (Discussing generally the prohibition on confiscatory ratemaking).

As discussed below, IIEC's changes essentially call for the Commission to set rates pursuant to test year billing units, while at the same time ordering the utility to affirmatively alter tariff provisions that will reduce billing. Such a change in the ALJPO is unreasonable and would impair the utilities' opportunity to recover its costs.

Combining metering data for the purpose of allowing adjacent generating units to off-set energy delivery requirements will reduce the calculated kWh and kW delivered to customers. Implementing such a proposal outside of a rate case impairs the AIU's opportunity for recovery because the rates resulting from this case are premised on historical test year billing units. The AIU derives its final rates by allocating the costs among classes and setting rates and charges in accordance with Commission accepted billing units. (Ameren Ex. 17.0 (Althoff Dir.) pp. 13-15). By mandating a tariff filing that will reduce billing units prospectively without a reciprocal modification to the billing units used to establish rates, the AIU would be deprived of its opportunity to fully recover the established revenue requirements granted in the Final Order.

The Proposed Order correctly recognizes that any tariff changes that allow for the combination of metering should be analyzed in a future rate case only after adequate analysis, stakeholder consideration, and consideration or broader rate impacts. Because the IIEC did not offer any specific tariff proposal as part of the evidentiary record in this case, the parties and Commission cannot analyze the full impact on billing determinants and rates in this docket.

If implemented absent synchronization with existing rates, the reduction in billing units could result in distribution delivery charge class revenue shortfalls in the thousands or millions of dollars depending on the particulars of the final tariff language. Additionally, because billing units would decrease, tax revenues would decrease as well. Revenues associated with statutory mandated energy efficiency programs that are collected on a per/kwh basis would also be impacted. These impacts could be significant and must be analyzed to fully understand the impacts on the distributed delivery charge, taxes, energy efficiency charges, and other potential consequences. For sake of example, if an 80MW CHP unit were to be used in conjunction with a DS-4 high voltage customer's load, the resulting distribution delivery revenue deficiency would be approximately 1.4 million dollars per year using the rates under revenue requirements established in the ALJPO without modification. (See AIU's Resp. to ALJDR (the calculation of revenue deficiency is based upon the rates resulting from the ALJPO)). Deficiencies corresponding to taxes and energy efficiency charges would depend on the level of those rates in effect during the time of cogeneration, but would likely be significant as well.

Therefore, a full rate impact analysis associated must occur within a future rate case in order to fully address the impacts of such changes to the AIU, customers operating CHP, and other customers that may assume responsibility for shifted cost responsibility.

IIEC expresses concern that there is no "certainty" regarding when the AIU will file a rate case in the future. (IIEC BOE, p. 73.) While there is no absolute "certainty" with regard to when the AIU will file its next rate case, recent history demonstrates that they occur in fairly regular intervals. Further, the study and examination of tariff changes between rate cases is not unusual. In the AIU's last rate cases, and pursuant to the Proposed Order, the AIU were instructed to investigate rate design changes related to a number of concerns. Order, Docket No. 07-0585 (cons.), pp 281-82. Similar provisions exist related to other rate design issues are also proposed in the present case. (ALJPO, p. 280.) The proposed changes for combined metering are no different, and the IIEC fails to articulate a reason to rush the introduction of a significant change in AIU tariffs without consideration of broader implications in the context of a rate case. As the ALJPO correctly notes, "[d]etermining language implementing combined metering may not be as straightforward as IIEC suggests." (Id., p. 309.)

For the above stated reasons, the ALJPO should be retained and the parties should commence discussion following the conclusion of this case on the development of just and reasonable provisions governing combined metering service to customers operating CHP facilities.

CONCLUSION

For the reasons discussed above, the Commission should reject Staff and Intervenors' exceptions and issue a Final Order consistent with the AIU's exceptions.

March 18, 2010

Respectfully submitted,

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS, ILLINOIS POWER COMPANY d/b/a AmerenIP

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CERTIFICATE OF SERVICE

I, Mark A. Whitt, certify that on March 18, 2010, I served a copy of the foregoing REPLY BRIEF ON EXCEPTIONS OF THE AMEREN ILLINOIS UTILITIES by electronic mail to the individuals on the Commission's Service List for the above captioned dockets.

By: *<u>/s/ Mark A.Whitt</u>*
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